

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

|                                  |   |                     |
|----------------------------------|---|---------------------|
| LORRAINE DUFFY,                  | : |                     |
|                                  | : |                     |
| Plaintiff,                       | : |                     |
|                                  | : |                     |
| v.                               | : | C.A. No. 06-460-SLR |
|                                  | : |                     |
| DEPARTMENT OF STATE, an          | : |                     |
| Agency of the State of Delaware, | : |                     |
|                                  | : |                     |
| Defendant.                       | : |                     |

**DEFENDANT’S OPPOSITION TO AMENDING THE SCHEDULING  
ORDER**

Defendant opposes plaintiff’s request to amend the Scheduling Order for reasons that follow:

1. On October 17, 2006, the parties submitted a proposed scheduling order to the Court. (D.I. 5, 6) On October 24, 2006, the Court entered that proposed order as the Scheduling Order. (D.I. 8)

2. The Scheduling Order provided that expert reports from the burdened party were due by May 31, 2007, and rebuttal reports were due by July 31, 2007. (D.I. 8, ¶ 2(g)) The Order also provided that the discovery deadline was October 1, 2007. (D.I. 8, ¶ 2(b))

3. On September 19, 2007, plaintiff requested a 30 day extension to which the defendant stipulated. (D.I. 18)

4. On October 22, 2007, plaintiff moved the Court to amend the Scheduling Order to permit plaintiff to now name experts, more than 5 months after such discovery was due. (D.I. 23)

5. To permit the late naming of experts would seriously prejudice the defendant. On the same date that plaintiff filed this motion, he sent counsel two ‘reports’<sup>1</sup>, one from Patricia A. Guarriello, Ph.D., a psychologist, and Stephen J. Cindrich, M.D., a Psychiatrist. The ‘reports’ are dated June 14, 2007, and June 17, 2007, respectively. Plaintiff claims that the ‘reports’ were “inadvertently overlooked and not filed in accord with the original Scheduling Order...” and suggests that since the expert opinions only deal with “extent of harm”, no other change to the Scheduling Order is required.

6. The defendant is seriously prejudiced by the late naming of experts more than 5 months after that discovery was required. It appears more onerous when one considers the dates on those ‘reports’ (June 14 and 17, 2007) and their late production to defendant’s counsel (October 22, 2007).

For the above reasons, defendant requests that the Court deny plaintiff’s motion to amend the Scheduling Order to permit the late naming of two experts.

Respectfully submitted,

/s/ Marc P. Niedzielski  
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DATED: October 29, 2007

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<sup>1</sup> The ‘reports’ do not comply with Fed.R.Civ.P. 26(a)(2)(B).

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|                                  | : |                     |
| Defendant.                       | : |                     |

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the date indicated he electronically served a copy of the attached document on the following:

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DATED: October 29, 2007